

REMARKS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

After entry of this amendment, Claims 1-9, 11-18, 20-23 and 25 are pending. Claims 1-8, 11-15, 17-18, 20-22 and 25 are amended, and Claims 10, 24 and 26-37 are canceled without prejudice or disclaimer. No new matter is introduced

By way of summary, the Office Action dated November 24, 2009 presents the following issues: Claims 1-16, 26 and 32-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston (WO 01/77815) in view of Johnson (U.S. Patent Application Publication No. 2002/0049841) and Piskiel (WO 97/46939); Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Hutcheson (U.S. Patent No. 6,947,761); Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Suarez (U.S. Patent No. 5,790,789); Claims 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Demendonca (U.S. Patent Application Publication No. 2004/0172453); Claims 27-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Guruprasad (U.S. Patent No. 6,802,068); Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson, Piskiel and Guruprasad in further view of Iyer (U.S. Patent Application Publication No. 2004/0203749); Claim 30 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Podgorny (U.S. Patent No. 6,078,948); and Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Vange (U.S. Patent No. 7,020,783).

Initially, Applicants gratefully acknowledge the courtesy of Examiner Rubin in holding a personal interview with Applicants' representatives on March 4, 2010. During the interview the outstanding issues in this case were discussed, as summarized below and in the Interview Summary, which the Examiner has made of record. No agreement was reached pending further search and consideration by the Examiner.

In reply to the rejection of Claims 1-16, 26 and 32-37 as being unpatentable over Logston, Johnson and Piskiel, Claim 1 is amended to recite, *inter alia*, a data access, replication or communications system that includes:

a terminal including an electronic memory storing a terminal-side *packet-queuing* executable and a processor provided to execute the terminal-side *packet-queuing* executable to enable communication therewith *independent of a session-based transport layer protocol*, the terminal-side *packet-queuing* executable dividing a message into a plurality of packets; and

a server including an electronic memory storing a server-side *packet-queuing* executable and a processor provided to execute the server-side *packet-queuing* executable to enable communication therewith independent of a transport layer session-based protocol, the server-side *packet-queuing* executable dividing a message into a plurality of packets,

wherein *the terminal-side packet-queuing executable and the server-side packet-queuing executable exchange a packet of the message over a radio network using a session-independent transport layer protocol and in dependence on acknowledgement of receipt of the packet by a receiving one of the terminal-side packet-queuing executable and the server-side packet queuing executable...*(Emphasis Added.)

It is believed that no art of record describes these features.

Logston describes determination and characterization of resource capabilities of a client device in a distributed application network. However, as acknowledged in the Office Action of November 24, 2009, Logston does not describe communication independent of a

session-based transport layer protocol.<sup>1</sup> However, the outstanding Office Action identifies Piskiel as describing this feature.

Piskiel describes a balanced queue system for delivery of *messages* in a distributed computing environment.<sup>2</sup> More specifically, Piskiel describes that *messages* are delivered by an originating node (200) to a receiving node (220), and respectively stored in message queues (214, 234) of corresponding to each of the nodes (200, 220).<sup>3</sup> If a transmission error occurs, Piskiel describes that message states are maintained in the queues (214, 234) and subsequently recovered when transmission resumes.<sup>4</sup>

However, Piskiel does not describe that the originating node (200) and the receiving node (220) exchange and queue individual packets, which form the messages, much less that originating node (200) and the receiving node (220) acknowledge receipt of each packet. Instead, Piskiel only describes delivery and acknowledgement of *messages* between the originating node (200) and the receiving node (220).<sup>5</sup> In fact, because Piskiel is silent regarding individual packet transmission and acknowledgement, in Piskiel entire messages must be resent when an acknowledgement is not received by the originating node (200).<sup>6</sup> Conversely, amended Claim 1 recites that the terminal-side packet-queuing executable and the server-side packet-queuing executable exchange a packet of the message over a radio network using a session-independent transport layer protocol and *in dependence on acknowledgement of receipt of the packet by a receiving one of the terminal-side packet-queuing executable and the server-side packet-queuing executable*. Therefore, Piskiel fails to disclose the claimed server-side and terminal-side packet-queuing executables, and does not cure the above-noted deficiencies in Logston.

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<sup>1</sup> See the outstanding Office Action at page 4.

<sup>2</sup> Piskiel at page 4, lines 10-20.

<sup>3</sup> Piskiel at page 4, lines 10-20; page 14, lines 20-30; page 16, lines 5-21; and also Figure 2.

<sup>4</sup> Piskiel at page 32, lines 15-27.

<sup>5</sup> Piskiel, at page 15, lines 1-11 and page 31, lines 20-30.

<sup>6</sup> Piskiel, at page 32, lines 3-8.

Moreover, neither Logston nor Piskiel describe transmission over a radio network as recited in Claim 1, and Johnson does not remedy any of these deficiencies in Logston and/or Piskiel.

Accordingly, no combination of Logston, Johnson and Piskiel describe every feature recited in amended Claim 1, and amended Claim 1, together with any claim depending therefrom, is believed to be in condition for allowance. Claims 26 and 32-37 are also canceled without prejudice or disclaimer. Accordingly, it is respectfully requested that the rejection of Claims 1-16, 26 and 32-37 under 35 U.S.C. § 103(a) be withdrawn.

As all other rejections of record rely upon Piskiel for describing the above-distinguished features, and the above-distinguished features are not disclosed or suggested by Piskiel, alone or in combination with any other art of record, it is respectfully submitted that a *prima facie* case of obviousness cannot be maintained. Accordingly, it is respectfully requested that the rejection of Claims 17-18, 20-25 and 27-31 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-9, 11-18, 20-23 and 25 is earnestly solicited.

Respectfully submitted,

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